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6 Trustee in Bankruptcy

7
8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In re

12 ICHARTS, INC.,

13 Debtor.
14

Case No. 18-50958 MEH
Chapter 7
Hon. M. Elaine Hammond

**TRUSTEE'S COMMENTS TO MOTION
TO RECONSIDER**

15 Date: July 30, 2020¹
16 Time: 10:30 a.m.
Via Zoom Videoconference

17
18 The motion should be denied. As provided in the final report, the Trustee has fully
19 administered all scheduled assets in the debtor's estate.
20

21 In considering the matter, the Trustee requests the Court to please note that the movants,
22 Valerie and Seymour Duncker, have no standing to file the instant motion. Neither of the movants
23 are creditors in this bankruptcy estate and neither has standing. Standing is a jurisdictional issue
24 that the Court is obliged to examine. *In re Lucas Dallas*, 185 B.R. 801, 804 (9th Cir. BAP 1995); *In*
25 *re Fondiller*, 707 F 2d. 441, 442 (9th Cir. 1983). As made clear in a review of the Claims register,
26 Mr. Duncker is not a creditor of the bankruptcy estate. *See*, Request for Judicial Notice, Exhibit A.

27
28 ¹The rescheduled hearing is set to occur when counsel for the Trustee is unavailable, and with no
phone or internet access.

1 “[A] person has standing to object to an order if that person can ‘demonstrate that the order
2 diminishes the person’s property, increases the person’s burdens, or impairs the person’s rights.’”
3 *In re Cult Awareness Network, Inc.*, 151 F 3d. 605, 608 (7th Cir. 1998) (citing *In re DuPage*
4 *Boilerworks, Inc.*, 965 F 2d. 296, 297 (7th Cir. 1992) and *In re Andreuccetti*, 975 F 2d. 413, 416 (7th
5 Cir. 1992)).

6 Courts consistently have noted a public policy interest in reducing the
7 number of ancillary suits that can be brought in the bankruptcy
8 context so as to advance the swift and efficient administration of the
9 bankrupt’s estate. This goal is achieved primarily by narrowly
10 defining who has standing in the bankruptcy proceeding.

11 151 F 3d. at 609, quoting *In re Richman*, 104 F 3d. 654, 656-657 (4th Cir. 1997).

12 Mr. Duncker has made multiple attempts to purchase assets of the estate and his offers have
13 been rejected by the Trustee. The law is very clear that disappointed buyers have no standing. Mr.
14 Duncker is not a real party in interest in the bankruptcy case. He is not a “person aggrieved” under
15 the *Fondiller* case. The person aggrieved test limits appellate standing to “those persons who are
16 directly and adversely affected pecuniarily by an order of the Bankruptcy Court.” 707 F 2d. at 4421.

17 Courts that have considered appellate standing in the context of the
18 sale or other disposition of estate assets have generally held that
19 creditors have standing to appeal, but disappointed prospective
20 purchasers do not.

21 *In re O’Brien Environmental Energy, Inc.*, 181 F 3d. 527, 531 (3rd Cir. 1999).

22 Because neither Mr. nor Mrs. Duncker are creditors of this estate and, therefore, have no
23 pecuniary interest in the outcome of the case, they are not an aggrieved person, and have no standing
24 to file the instant motion.

25 DATED: July 27, 2020

RINCON LAW LLP

26 By: /s/ Gregg S. Kleiner

GREGG S. KLEINER

Counsel for FRED HJELMESET,

Trustee in Bankruptcy